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9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 SANDI GEANNARIS,)
12)
13 Plaintiff,)
14) Case No.: 2:10-cv-00877-LRH-LRL
15 AMERICAN FAMILY MUTUAL)
16 INSURANCE COMPANY; DOES 1-10,)
inclusive; ROE CORPORATIONS 1-10,)
inclusive;
17)
18 Defendants.)
19 _____)

20 **PLAINTIFF'S MOTION TO REMAND TO STATE COURT**

21 Plaintiff, Sandi Geannaris, by and through her undersigned counsel, moves this Court for
22 an order remanding this case back to the District Court, County of Clark, State of Nevada.
23 Plaintiff is entitled to remand because the amount in controversy sought is less than \$75,000 and
24 this Court does not have jurisdiction under 28 U.S.C. §1332. Defendant, American Family
25 Mutual Insurance Company, has consented to Plaintiff's herein Motion to Remand to State
26 Court.
27
28

1 This Motion is made and based upon the following Memorandum in Support of
2 Plaintiff's Motion to Remand to State Court, the Affidavit and Stipulation of Sandi Geannaris
3 that the amount in controversy not to exceed \$75,000 under 28 U.S.C. §1332, the pleadings and
4 papers on file herein, and any further argument entertained by the Court at the hearing of this
5 Motion.

7 DATED this 23rd day of June, 2010.

8 MURPHY, SMALL & ASSOCIATES

11 /s/ Michael R. Small _____
12 Patrick J. Murphy, Esq.
13 Nevada Bar No. 1222
14 Michael R. Small, Esq.
15 Nevada Bar No. 7519
16 1100 East Bridger Avenue
17 Las Vegas, Nevada 89101
18 Attorneys for Plaintiff

1 **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION**
2 **TO REMAND TO STATE COURT**

3 **I.**

4 **PRELIMINARY STATEMENT**

5 The case before this Court arises from the circumstances surrounding an automobile
6 accident involving the Plaintiff on January 27, 2009. At issue is the medical payments coverage
7 under her motor vehicle policy with Defendant, American Family Mutual Insurance Company,
8 and their failure to pay Plaintiff's medical expenses incurred as a result of the injuries she
9 sustained in this automobile accident.

10 On June 8, 2010, Defendant removed the Nevada state court action to this Court alleging
11 at paragraph 8 of their Petition for Removal, that Defendant believes the Plaintiff's claim in the
12 matter in controversy exceeds \$75,000.00 exclusive of interest and costs. Subsequently, counsel
13 for the Plaintiff informed Defendant that the plaintiff would not seek damages in excess of
14 \$74,999.99, and that she was prepared to file an Affidavit and Stipulation as to the amount in
15 controversy and damages not to exceed \$75,000 under 28 U.S.C. §1332. The Affidavit of Sandi
16 Geannaris accompanies this Motion to Remand to State Court.
17

18 As more fully argued hereinbelow, Plaintiff has clarified her Complaint, and Defendant
19 has no basis upon which to claim that this case meets the jurisdictional threshold of \$75,000
20 contained in 28 U.S.C. §1332(a).

21 **II.**

22 **ARGUMENT**

23 Under 28 U.S.C. §1332(a), Congress has provided that the District Courts shall have
24 original jurisdiction of all civil actions when the matter in controversy exceeds the sum or value
25 of \$75,000. In questions of federal jurisdiction, the party invoking the jurisdiction of the federal
26

court carries the burden of proving its existence. *Coventry Sewage Assoc. v. Dworkin Realty Co.*, 71 F.3d 1, 4 (1st Cir. 1995). To determine whether the amount in controversy has been met, “the status of a case as disclosed by plaintiff’s complaint is controlling in the case of a removal...”; *St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 291 (1938); *Paschinger v. MGM Grand Hotel-Las Vegas, Inc.*, 802 F.2d 362, 363-64 (9th Cir. 1986). Where there is no facial evidence from the complaint that more than \$75,000 is in controversy, the removing party must prove, by a preponderance of the evidence, that the amount in controversy meets the jurisdictional threshold. *Matheson v. Progressive Specialty Inc. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (citing *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404-04 (9th Cir. 1996)). If it is unclear what amount of damages the plaintiff has sought... then the defendant bears the burden of actually proving the facts that support jurisdiction, including the jurisdictional amount. *Krajca v. Southland Corp.*, 206 F.Supp.2d 1079, 1081 (D. Nev. 2002).

In this case, the Plaintiff has submitted an Affidavit and Stipulation that limits her claim for damages to less than the \$75,000 threshold amount. The United States Supreme Court has noted that a plaintiff is permitted to prevent a defendant from removing to federal court by “resorting to the expedient of suing for less than the jurisdictional amount... though he would be justly entitled to more.” *St. Paul Mercury Idem. Co. v. Red Cab Co.*, 303 U.S. 283, 294 (1938). Other courts have allowed a plaintiff to limit damages and therefore maintain a claim worth less than \$75,000 threshold of 28 U.S.C. §1332(a). In *Satterfield v. F.W. Webb, Inc.*, 334 F.Supp.2d 1, 1 (D. Me. 2004) the court found that a plaintiff is the master of the claim and therefore she should have the power to limit her claim so it is not subject to federal subject matter jurisdiction. (quoting *Gafford v. General Elec. Co.*, 997 F.2d 150, 157 (6th Cir. 1993)). See also *Raymond v. Lane Construction Corp.*, 527 F.Supp. 2d 156 (D. Me. 2007).

1 It is submitted, that the Affidavit and Stipulation of the Plaintiff, clarifies her Complaint
2 filed in Nevada state court on May 4, 2010, and demonstrates that she is not seeking damages
3 sufficient to meet the jurisdiction threshold of \$75,000 under 28 U.S.C. §1332(a). Accordingly,
4 this Court should remand this case back to Nevada state court.
5

6 **III.**

7 **CONCLUSION**

8 It is submitted, based on the foregoing, that Plaintiff is not seeking damages sufficient to
9 meet the jurisdictional amount of \$75,000. Plaintiff's herein action should be remanded to
10 Nevada state court, County of Clark, State of Nevada.
11

12 Dated this 23rd day of June, 2009.

13 MURPHY, SMALL & ASSOCIATES
14

15 /s/ Michael R. Small _____
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1 **CERTIFICATE OF SERVICE**

2 I certify that a true and correct copy of the foregoing document was forwarded by
3 electronic means through the Court's ECF System to all counsel of record, as follows:
4

5 Thomas E. Winner, Esq.
6 ATKIN WINNER & SHERROD
7 1117 South Rancho Drive
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10 /s/ Michael R. Small
11 Michael R. Small, Esq.